IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.885 of 2006
&
connected matters being
CWPs No.1120,1173,1174,1302,846,
851,863, 886,887, 888,892, 893,900
901,903,910,916,917,918,919,920, 936,
942,943,944,945,946,947,948,949,950,951,
953,954,955962,983,989,990,995,996,997,
998 of 2006 and 375 & 457 of 2007

Judgment reserved on: 16.8.2007

Date of Decision: August 27, 2007.

Hitender Kumar & Ors. … Petitioners

Versus

State of H.P.& Ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting? ***yes***

For the Petitioners : M/s Bhuvnesh Sharma, Sandeep Kaushik, Sanjiv Bhushan, Neel Kamal Sharma, Nitin Misra vice Mr. P.P.Chauhan, Sandeep Vashisht vice Mr.Trilok Jamwal, Advocates.

For the Respondent(s) : M. M.S.Chandel, Advocate General, With Mr. R.M.Bisht, Deputy Advocate General, for the State- respondents.

M/s Y.P.S.Dhaulta, Anup Rattan, & M.A.
Khan, Central Government Counsel for the respondent- Union of India.

Deepak Gupta, J.

By this common judgment, we dispose of all the aforesaid writ petitions since common questions of law and facts are involved therein.

Education is a very vital weapon in the armoury of any person in a literate society. An uneducated person suffers from inherent disabilities. The Central Government and the State Government realizing the importance of education introduced the District Primary Education Programme (for short: DPEP) in the Educationally Backward Districts of the State in the year 1996-97. This scheme was launched by the State with the assistance of the Government of India and the World Bank.

Thereafter the Sarv Shiksha Abhiyan (for short: SSA) was started in the State of Himachal Pradesh. The propose of this movement is to improve performance of the school system and to provide community owned quality education. The SSA is meant for the children upto 14 years of age i.e. upto upper primary level (8th class) and this Abhiyan was to take over the responsibility and activities of the DPEPs where they were functioning. The SSA was to function all over the State of H.P.

The posts of Block Resource Centre Coordinators (for short: BRCC) were available under the DPEP scheme and also under the SSA. However, the number of posts available under the SSA is much larger. The avowed purpose of creation of the posts of BRCC is to improve the quality of education by providing academic and other

guidance to the primary teachers. It is also admitted that one of the purposes of the SSA is to ensure that the students who have dropped out of schools should be brought back into the educational fold. The purpose of the SSA is also to bridge the gender gap and to ensure that primary education is available to the girl child and also to children belonging to the depressed classes such as Scheduled Castes/Scheduled Tribes etc. The objectives of the SSA are as under:-

i) To enroll all children in formal education in formal schools, education guarantee schools/centres, alternative schools and back to back school camps etc. by the year 2003;

ii) To retain all children in the age group of 6-14 in formal schools or their alternatives by the year 2010;

iii) To ensure all the children in the age group of 6-11 complete five years of education by the 2007 and all the children complete their elementary education by the year 2014;

iv) To bridge gender and social disparities at the primary level by the year 2007 and at elementary level by 2010.

The State Project Director, SSA & DPEP, sent a letter to all the Principals of Non-DPEP Districts in HP in April 2002 asking them to initiate the process of filling up of the posts of BRCCs. The relevant portion of the letter reads as follows:-

> "You are, therefore, requested to initiate process of filling up of the posts of BRCCs after making vast advertisement in all the blocks of the districts and constituting the selection committees under the chairmanship of the concerned Deputy Commissioner, both the Deputy Directors of Education at the district level s members and

> Principal DIET as Member Secretary. The incumbent, so selected, should have at least 10 years of service for retirement to maintain continuity and ensure that the same person could be available for the entire project period."
>
> { Emphasis supplied }

This letter was followed by letter of the Director, Primary Education, sent to all the Deputy Directors (Primary Education). This letter also contained the following contents:

> "… The JBT teacher to be selected as Block Resource Co-ordinator should have at least 10 years of service for retirement in order to ensure the availability of the incumbent for the entire Project period."

The petitioners before this Court were selected as BRCCs after undergoing due process of selection. According to them, as per the scheme they were to continue as BRCCs for the complete period of the scheme and they cannot be repatriated to their parent posts. It is alleged that the State is bound by the principles of promissory estoppel and cannot revert the duly appointed BRCCs to their parent posts. They are aggrieved by a letter dated 5.10.2004 issued by the State Government. The relevant portion of which reads as follows:-

> "Now, that the DPEP has come to an end and Sarva Shiksha Abhiyan has also completed more than two years, there is need to review the appointment of Block Resource Coordinators so that the Sarva Shiksha Abhiyan could be implemented with full zeal and targets achieved in time. Change of Block Resource Coordinators may be necessitated due to promotion,

> retirement etc as also due to crossing of age by some officials. At the same time some new teachers who may have completed 10 years service may also want to devote their services towards Sarva Shiksha Abhiyan activities. In DPEP Districts, BRCs may already have completed number of years of service, which also needs change for the better implementation of the programme and infusion of new teachers.
>
> It has, therefore, been decided by the Government that the BRCs may be replaced by new set of teachers especially in DPEP Districts, wherever necessary. You are, therefore, requested to immediately initiate the process of filling up of posts of Block Resource Coordinators on secondment basis after giving due publicity in the respective Blocks. It maybe ensured that the JBT teachers who are to be selected as Block Resource Coordinators should have served for atleast 10 years and who also have atleast 10 years service left for retirement in order to ensure continuity."

All the petitioners apprehending their repatriation to their parent posts approached the Tribunal. The Tribunal came to the conclusion that the principle of promissory estoppel was not applicable to the case and that the petitioners could be repatriated to their substantive posts and have no right to continue to function as BRCCs. Aggrieved against the order of the learned Tribunal, these writ petitions have been filed by the petitioners.

We have heard learned counsel for the parties and have gone through the entire records of the case.

As far as the principle of promissory estoppel is concerned, we are of the considered view that the said principle is not

applicable to the facts of the present case. The very basic premise to attract the principle of promissory estoppel is that the person who wants to take benefit of this principle should have undergone some deprivation or should have suffered disadvantage by accepting the promise. In the present case, it is nobody's case that the petitioners have suffered any disadvantage and in our view, the principle of promissory estoppel is not attracted.

It is trite law that no employee has a right to urge that he must continue at a particular place throughout his service career. However, the facts of the present case are different. A scheme has been framed by the State Government in collaboration with the Central Government, the purposes whereof have already been spelt out above. The purposes of the scheme are to ensure that all children are enrolled in formal education and that all children in the age group of 6 to 14 shall continue to study in schools and do not drop out of schools. The purpose of the scheme was also to bridge gender and social disparities. To achieve this purpose, a dedicated staff is required. This requires a special type of acumen and a different driving force. A good teacher need not necessarily be a good person to run the SSA. The person manning the scheme has to be committed to the social purposes sought to be achieved. These have to be person(s) having dedication.

In view of the special qualities needed in the person(s) manning the SSA, the BRCCs were appointed after selection and not merely by deputation/transfer. A perusal of the documents referred to above clearly indicates that the idea was that these people would be trained to achieve the specific targets of the

scheme. They would gain experience and attain more knowledge as the work and would develop necessary enterprise to achieve the goals of the scheme and, therefore, they should be continued till the scheme comes to an end. This is amply clear from some of advertisements annexed with some of writ petitions in which it was clearly mentioned that BRCCs would be appointed for 7 years and 6 months i.e. upto 31st March, 2010. This is also clear from the communications of the various Deputy Commissioners where they have expressed their apprehension that the BRCCs should not be repatriated or transferred before the completion of SSA since the persons have been trained and in case they are transferred, a lot of financial and other inputs have to be spent for capacity building. Reference may also be made to the *Aide Memoire* of the Second Joint Review Mission of the SSA wherein one of the points which was noted reads as follows:-

> "**3.17. Stability in tenure of key functionaries in a must for program implemention.** There are instances of frequent shifting of personnel at different levels. For example, all data management personnel were shifted in Manipur soon after they were trained. Frequent shifting of SPOs and other functionaries are also cases in point. An MoU with status/UTs in this respect may be considered by the GOI."

In view of the aforesaid facts, we are of the considered view that it is in the interest of the SSA as well as in the interest of the under privileged children for whose benefit this Abhiyan has been started to ensure the continuity of the persons appointed under the scheme. However, this does not mean that no BRCC can be

repatriated to his parent post under any circumstances. We can envisage various circumstances where fresh appointments/transfers may have to be made. Some of them are set out below:-

i) When the incumbent BRCC retires, he is to be replaced by a fresh appointee;

ii) When the incumbent BRCC is promoted he may not want to forego his promotion and in such an eventuality, he will obviously have to be posted out and in his place a fresh BRCC shall have to be appointed;

iii) There may be cases where the BRCC personally requests for being transferred out on some personal grounds;

iv) The Project Director and the authorities who over-see the functions of the SSA have also the right to review the functioning of the BRCCs. In case, they find on the basis of tangible material that a particular person has been unable to perform adequately and has failed to deliver the expected results then even on the ground of non-performance, such a BRCC can be ordered to be repatriated to the parent department. However, before doing so, the entire material on the basis of which his performance is evaluated must be gone into;

v) There may be case where there are allegations of misconduct against the BRCC. In such cases also, the BRCC may be repatriated;

vi) There may be cases where the BRCC acts in such a manner which adversely affects the target of the SSA. In such a case or any other case where the objectives of the SSA are likely to be adversely affected by the functioning of a particular employee as BRCC, the said person may be repatriated.

However, in normal course, if the person holding the post of BRCC is working satisfactorily, he shall not be repatriated till the goals of the scheme are fully achieved and it comes to an end.

With these observations, all the writ petitions are disposed of in the aforesaid terms. The State Government is directed to examine each case on its own merit in light of the observations made hereinabove.

(Deepak Gupta), J.

August 27, 2007. (V.K.Ahuja),J.

s.